

EXHIBIT B

WILLIAM D. TEMKO (State Bar No. 098858)
 William.Temko@mto.com
 WESLEY T. SHIH (State Bar No. 233531)
 Wesley.Shih@mto.com
 MUNGER, TOLLES & OLSON LLP
 355 South Grand Ave., 35th Floor
 Los Angeles, California 90071-1560
 Telephone: (213) 683-9100
 Facsimile: (213) 687-3702

PATRICK J. CAFFERTY, JR (State Bar No. 103417)
 Patrick.Cafferty@mto.com
 HOJOON HWANG (State Bar No. 184950)
 Hojoon.Hwang@mto.com
 MUNGER, TOLLES & OLSON LLP
 560 Mission Street, 27th Floor
 San Francisco, CA 94105-2907
 Telephone: (415) 512-4000
 Facsimile: (415) 512-4077

Attorneys for Defendants
 SHELL OIL COMPANY AND EQUILON
 ENTERPRISES LLC

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA

CITY OF MERCED REDEVELOPMENT)	Case No.
AGENCY,)	
)	[Merced County Superior Court Case No.
Plaintiff,)	151145]
)	
v.)	NOTICE OF REMOVAL
)	
EXXON MOBIL CORPORATION; EXXON)	
CORPORATION; CHEVRON U.S.A. INC.;)	
CONOCOPHILLIPS COMPANY, F/K/A)	
PHILLIPS PETROLEUM COMPANY,)	
INDIVIDUALLY AND AS SUCCESSOR-)	
IN-INTEREST BY MERGER TO TOSCO)	
CORPORATION; SHELL OIL COMPANY;)	
KINDER MORGAN ENERGY PARTNERS,)	
L.P.; EQUILON ENTERPRISES LLC; SFPP,)	
L.P.; TESORO CORPORATION; TESORO)	
REFINING AND MARKETING COMPANY))	
and DOES 1 THROUGH 200, inclusive,)	
)	
Defendants.)	

1 **NOTICE OF REMOVAL**

2 TO THE HONORABLE JUDGE OF THIS COURT:

3 The undersigned defendants (“Defendants”), by their attorneys and pursuant to the Energy
4 Policy Act of 2005, Pub. L. 109-58, Title XV, § 1503, Aug. 8, 2005, 119 Stat. 1076, 42 U.S.C. §
5 7545 (nt), and 28 U.S.C. § 1446, file their Notice of Removal of this action captioned as *City of*
6 *Merced Redevelopment Agency v. Exxon Mobil Corporation, et al.*, Case No. 151145, from the
7 Superior Court of the State of California in and for the County of Merced, to the United States
8 District Court for the Eastern District of California. The basis for removal is as follows:

9 1. On April 7, 2008, Plaintiff City of Merced Redevelopment Agency (“Merced
10 RDA” or “Plaintiff”) filed this action in the Merced Superior Court. A copy of the Complaint is
11 attached hereto as Exhibit 1. A copy of all other “process, pleadings, and orders” in the
12 underlying action are attached hereto as Exhibit 2. *See* 28 U.S.C. § 1446(a).

13 2. Defendants remove this action on the basis of the Energy Policy Act of 2005,
14 which includes an express provision allowing for the removal of claims and legal actions related
15 to allegations involving actual or threatened contamination of methyl tertiary butyl ether
16 (“MTBE”) to the appropriate United States District Court. This law was enacted on August 8,
17 2005. *See* 42 U.S.C. §§ 7545, *et seq.*, Pub.L. 109-58, Title XV, § 1503. Removal is appropriate
18 here pursuant to the Energy Policy Act because, as described in greater detail below, Plaintiff’s
19 claims relate to alleged MTBE contamination.

20 3. This Notice of Removal is filed in the District Court of the United States for the
21 district in which this suit was filed.

22 4. No Defendant was served prior to April 22, 2008. Accordingly, this Notice of
23 Removal is filed within the time frame provided by 28 U.S.C. § 1446(b).

24 5. All Defendants have joined in this Notice or otherwise consented to this removal.
25 For obvious reasons, the law is clear that fictitious or non-existent parties, including Doe
26 defendants, are not required to join in or consent to the removal.¹

27 ¹ *United Computer Sys., Inc. v. AMT Corp.*, 298 F.3d 756, 762 (9th Cir. 2002) (“nominal”
28 defendants need not consent to removal); *Steel Valley Auth. V. Union Switch & Signal Div.*, 809

(Footnote Cont’d on Following Page)

6. Pursuant to the requirements of 28 U.S.C. § 1446(d), Defendants will promptly file a copy of this Notice of Removal with the Clerk of the Superior Court in and for the County of Merced, where the action was originally filed. Defendants have also served Plaintiff with this Notice of Removal.

ALLEGATIONS OF PLAINTIFF'S COMPLAINT

7. The plaintiff, City of Merced Redevelopment Agency ("Merced RDA" or "Plaintiff") is a California state agency charged with the power to alter, improve, reconstruct, rehabilitate, modernize, and clean property located in the Merced Redevelopment Project Area ("project area"). (Exhibit 1, ¶1) Plaintiff alleges that the named defendants, corporate members of the gasoline industry, are responsible for the costs and damages relating to the presence and abatement of gasoline and MTBE located in or about the project area. (*Id.*, ¶¶3-15). Plaintiff's causes of action are based on state statutory and common law. (*Id.*, ¶¶32-67).

8. Plaintiff further alleges that Defendants, *inter alia*, supplied gasoline containing MTBE to stations in Merced from 1992 to at least 2002, such that releases of gasoline to the subsurface contaminated and polluted the project area. (Exhibit 1, ¶15). Plaintiff also brings allegations that Defendants, *inter alia*, sold and distributed MTBE; owned and operated gasoline delivery systems in areas affecting the project area; and failed to take the appropriate remedial action to abate MTBE that escaped from gasoline delivery systems. (*Id.*).

9. The Complaint also contains specific allegations that Defendants concealed or failed to disclose their knowledge that MTBE would contaminate soil and groundwater in particular. (Exhibit 1, ¶¶24-25). Additionally, Plaintiff contends that Defendants chose not to take precautions in light of their knowledge of the possibility of discharges of MTBE into the soil and groundwater. (*Id.*, ¶¶26-27).

10. Plaintiff brings one statutorily based cause of action—cost recovery under the Polanco Redevelopment Act (California Health & Safety Code §§ 33459-33459.8). (Exhibit 1,

(Footnote Cont'd From Previous Page)

F.2d 1006, 1009 n.2 (3d Cir. 1987) ("nominal" parties are disregarded in determining whether all defendants consent to removal).

¶¶32-34). Plaintiff also brings state common law causes of action for products liability, negligence, trespass, and nuisance. (*Id.*, ¶¶35-67). All causes of action are based on the harm allegedly caused by the presence of MTBE in the soil and groundwater within the project area. (*Id.*, ¶¶35-67).

JURISDICTION AND BASIS FOR REMOVAL

11. Defendants remove this case on the basis of the Energy Policy Act of 2005, which specifies that “Claims and legal actions filed after the date of enactment of this Act [Aug. 8, 2005] related to allegations involving actual or threatened contamination of methyl tertiary butyl ether (MTBE) may be removed to the appropriate United States district court.” Pub.L. 109-58, Title XV, § 1503, Aug. 8, 2005, 119 Stat. 1076. As this action was filed on April 7, 2008 and includes allegations regarding MTBE contamination, this action is properly removed under the Energy Policy Act.

12. In addition to the jurisdiction over the claims against Defendants, as set forth above, this Court has supplemental jurisdiction over the remainder of the state court claims pursuant to 28 U.S.C. § 1367.

WHEREFORE, Defendants hereby remove to this Court the action captioned *City of Merced Redevelopment Agency v. Exxon Mobil Corporation, et al.*, Case No. 151145 from the Superior Court of the State of California in and for the County of Merced.

Dated: May 21, 2008

MUNGER, TOLLES & OLSON LLP

By: /s/
PATRICK J. CAFFERTY, JR
Attorneys for Defendants Shell Oil
Company and Equilon Enterprises LLC

Exhibit 1

Exempt from Filing Fee
[Govt. Code, § 6103]

2008 APR -7 PM 1:31

CLERK OF THE SUPERIOR COURT
C.N. JUÁREZ
BY _____ DEPUTY

Duane C. Miller, #57812
Michael D. Axline, #229840
A. Curtis Sawyer, Jr., #101324
Tracey L. O'Reilly, #206230
Tamarin E. Austin, #207903
Evan Eickmeyer, #166652
Daniel Boone, #148841
MILLER, AXLINE & SAWYER
A Professional Corporation
1050 Fulton Avenue, Suite 100
Sacramento, CA 95825-4225
Telephone: (916) 488-6688
Facsimile: (916) 488-4288

Gregory G. Diaz, City Attorney, #156318
Jeanne E. Schechter, Chief Deputy City Attorney, #149457
M. Steven Wang, Deputy City Attorney III, #191168
City of Merced
OFFICE OF THE CITY ATTORNEY
678 West 18th Street
Merced, CA 95340
Telephone: (209) 385-6868
Facsimile: (209) 723-1780

Attorneys for Plaintiff
City of Merced Redevelopment Agency

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MERCED**

CITY OF MERCED REDEVELOPMENT
AGENCY,

Plaintiff,

v.

EXXON MOBIL CORPORATION;
EXXON CORPORATION; CHEVRON
U.S.A. INC.; CONOCOPHILLIPS
COMPANY, F/K/A PHILLIPS
PETROLEUM COMPANY,
INDIVIDUALLY AND AS SUCCESSOR-
IN-INTEREST BY MERGER TO TOSCO
CORPORATION ; SHELL OIL
COMPANY; KINDER MORGAN
ENERGY PARTNERS, L.P.; EQUILON
ENTERPRISES LLC; SFPP, L.P.;
TESORO CORPORATION; TESORO
REFINING AND MARKETING
COMPANY; and DOES 1 THROUGH
200, inclusive,

Defendants.

CASE NO. **151145**

**COMPLAINT FOR DAMAGES AND OTHER
RELIEF FOR:**

- (1) COST RECOVERY UNDER THE
POLANCO REDEVELOPMENT ACT;
- (2) PRODUCTS LIABILITY;
- (3) NEGLIGENCE;
- (4) TRESPASS; AND
- (5) NUISANCE

1 Plaintiff City of Merced Redevelopment Agency hereby alleges as follows:

2 **I. PLAINTIFF.**

3 1. Plaintiff City of Merced Redevelopment Agency ("Merced RDA" or "plaintiff") is an
4 "agency" within the meaning of California Health and Safety Code section 33003, with the power
5 to sue under Health and Safety Code section 33125, subdivision (a), and charged with the
6 statutory power to alter, improve, reconstruct, rehabilitate, modernize, and clean up property in the
7 blighted Merced Redevelopment Project Area ("project area") in the interests of the health, safety,
8 and general welfare of the people. Generally, plaintiff alleges and contends that each of the
9 named and DOE defendants is legally responsible for the costs and damages relating to the
10 presence and abatement of gasoline, hydrocarbons, and MTBE located in or about the project area
11 which blight the project area, adversely impact the use of the project area, depreciate or stagnate
12 property values, and adversely affect the interests of the health, safety, and welfare of the people.

13 2. Environmental investigation and testing of the project area determined that the
14 redevelopment area was contaminated with gasoline, hydrocarbons, and MTBE.

15 **II. DEFENDANTS.**

16 3. The defendants in this action are corporate members of the gasoline industry. As
17 described below, defendants (other than Kinder Morgan and SFPP) sold gasoline containing
18 MTBE and/or TBA to Merced gasoline stations that released gasoline containing MTBE and/or
19 TBA into the environment. Gasoline containing MTBE and/or TBA has contaminated, polluted,
20 and threatened, and continues to contaminate, pollute, and threaten, the Merced RDA project area.

21 4. When this complaint refers to any act or omission of the defendants, such reference
22 shall be deemed to mean that the officers, directors, agents, employees, or representatives of the
23 defendants committed or authorized such act or omission, or failed to adequately supervise or
24 properly control or direct their employees while engaged in the management, direction, operation,
25 or control of the affairs of defendants, and did so while acting within the scope of their
26 employment or agency.

27 5. Defendant Chevron U.S.A. Inc. ("Chevron") is a Pennsylvania corporation whose
28 corporate headquarters and principal place of business is in San Ramon, California.

1 6. Defendant Shell Oil Company ("Shell") is a Delaware corporation doing business in
2 California.

3 7. Defendant Exxon Mobil Corporation ("Exxon Mobil") is a New Jersey corporation
4 doing business in California. Plaintiff is informed and believes that Exxon Mobil was formed on
5 or about November 30, 1999, as a result of a merger of Mobil Corporation and Exxon
6 Corporation, and is a successor-in-interest to Exxon Corporation and Mobil Corporation.

7 8. Defendant Exxon Corporation ("Exxon") is a New Jersey corporation doing business in
8 California.

9 9. Defendant Kinder Morgan Energy Partners, L.P. ("Kinder Morgan"), is a Delaware
10 limited partnership doing business in California.

11 10. Defendant SFPP, L.P. ("SFPP"), is a Delaware limited partnership doing business in
12 California.

13 11. Defendant ConocoPhillips Company, f/k/a Phillips Petroleum Company, individually
14 and as successor-in-interest by merger to Tosco Corporation ("Conoco"), is a Delaware
15 corporation doing business in California. Plaintiff is informed and believes that ConocoPhillips
16 Company is the successor in interest to Tosco Corporation.

17 12. Defendant Equilon Enterprises LLC ("Equilon") is a Delaware Limited Liability
18 Company doing business in California. Plaintiff is informed and believes that Equilon Enterprises
19 LLC was a joint venture formed in July 1997, as the successor-in-interest to certain Shell- and
20 Texaco-branded retail gasoline stations and sold branded gasoline. Shell owned 56% of the joint
21 venture.

22 13. Defendant Tesoro Corporation ("Tesoro") is a Delaware corporation doing business in
23 California.

24 14. Defendant Tesoro Refining and Marketing Company ("TRMC") is a Delaware
25 corporation doing business in California.

26 15. Defendants Chevron, Shell, Exxon Mobil, Exxon, Kinder Morgan, SFPP, Conoco,
27 Equilon, Tesoro, TRMC, and DOES 1 through 200 will be collectively referred to hereafter as the
28 "Defendants." The Defendants, and each of them, supplied their branded gasoline containing

MTBE and/or TBA, from 1992 to at least 2002, to stations in Merced, such that releases of gasoline to the subsurface contaminated and polluted the Merced RDA's project area. Among other things, these Defendants: (1) sold, promoted, marketed, distributed, transported, and/or exchanged gasoline containing MTBE and/or TBA, which is contaminating, polluting, and threatening Merced RDA's project area; (2) owned, operated, and/or controlled gasoline delivery systems including, but not limited to, gasoline stations, gasoline storage, transfer, delivery, and dispensing systems (collectively herein "gasoline delivery systems") in areas affecting Merced RDA's project area; (3) were legally responsible for and committed each of the multiple tortious and ongoing wrongful acts alleged in this complaint; (4) negligently constructed, installed, fabricated, owned, operated, controlled, inspected, and/or repaired gasoline delivery systems and/or pipelines from which MTBE and/or TBA is contaminating, polluting, and threatening Merced RDA's project area; (5) negligently and/or intentionally failed and refused to take appropriate remediation action to abate MTBE and/or TBA plumes when MTBE and/or TBA escaped from the gasoline delivery systems; and (6) in doing the tortious and wrongful acts alleged in this complaint, acted in the capacity of aider, abettor, joint-venturer, partner, agent, principal, successor-in-interest, surviving corporation, controller, alter-ego, licensee, licensor, patent holder, and/or indemnitor of each of the remaining DOE and named defendants.

III. ALLEGATIONS APPLICABLE TO ALL CAUSES OF ACTION.

A. The Contaminants: MTBE and TBA.

16. MTBE is an additive to gasoline. Wherever referred to in this complaint, MTBE means not only methyl tertiary butyl ether, but also the contaminants in commercial grade MTBE.

17. TBA is present in some gasoline. TBA is a gasoline constituent, an impurity in commercial grade MTBE, and a degradation or breakdown product of MTBE.

18. MTBE and TBA contaminate the environment through leaks and spills from gasoline delivery systems. Once released to the environment, MTBE and TBA are more mobile, soluble, and persistent than other gasoline constituents that have historically been of environmental and/or toxicological concern, specifically the "BTEX compounds" (benzene, toluene, ethylbenzene, and xylene). MTBE and TBA spread farther and faster than other components of gasoline, and are

1 difficult and costly to remove from groundwater and drinking water supplies.

2 **B. Regulatory Standards Applicable to MTBE and TBA.**

3 19. No federal or state agency has approved either MTBE or TBA as an additive to
4 drinking water. No federal or state agency has approved releasing MTBE or TBA into
5 groundwater. No federal or state agency has ever required that gasoline contain MTBE and/or
6 TBA.

7 20. Along with its other properties, MTBE can render water supplies undrinkable by
8 changing the taste and odor of water into a foul smelling liquid with a turpentine odor and
9 chemical taste unfit for human consumption. The State of California established a secondary
10 maximum contaminant level ("MCL") for MTBE of 5 parts per billion ("ppb"). This means that
11 the law prohibits using water containing MTBE at or above this level in public drinking water
12 because of MTBE's aesthetic properties. Many individuals, however, can smell and taste MTBE
13 in water, even when the concentration of MTBE is less than 1 ppb.

14 21. MTBE also presents a significant public health threat. Because of MTBE's potential
15 for causing cancer, the State of California has established a primary (health) MCL for MTBE of
16 13 ppb. This means that the law prohibits using water containing MTBE at or above this level in
17 public drinking water because of MTBE's threat to public health.

18 22. TBA also presents a significant threat to public health. The State of California has set
19 an action level for TBA of 12 ppb in water, based on an interim assessment performed by the
20 California Office of Environmental Health Hazard Assessment. The interim assessment
21 concluded that exposure to TBA at levels above 12 ppb in water creates an unacceptable public
22 health risk of cancer.

23 23. California Governor Gray Davis ordered state agencies to phase out MTBE use in
24 motor fuel in California, and to achieve 100% removal no later than December 31, 2003.
25 Eighteen states, including California, have either banned or are phasing out the use of MTBE in
26 gasoline.

27 **C. Defendants' Promotion of MTBE and TBA.**

28 24. The Defendants promoted the use of gasoline containing MTBE and/or TBA by

1 claiming that it was environmentally beneficial and would improve air quality. At the same time,
2 Defendants concealed and/or failed to disclose that MTBE would contaminate groundwater and
3 render it not potable.

4 25. The widespread problems of leaking gasoline delivery systems were well known to
5 the Defendants prior to the introduction of MTBE and TBA. At least as early as the mid-1960's
6 these Defendants knew, or reasonably should have known, that gasoline delivery systems
7 frequently leak and release gasoline into the environment, including into groundwater.

8 26. Despite knowing that a substantial percentage of Merced gasoline stations would
9 utilize gasoline storage and distribution facilities which were inadequate and leaking, and without
10 taking reasonable, appropriate, or special measures to monitor, detect, and respond to releases of
11 MTBE and/or TBA to soil and/or groundwater, and without taking reasonable, appropriate, or
12 special precautions to investigate, contain, and cleanup releases of these compounds, and despite
13 the availability of reasonable alternatives (including adequate warnings), Defendants chose not to
14 warn customers, retailers, environmental consultants, regulators, or public officials, including the
15 Merced RDA. At all times, Defendants represented to purchasers of MTBE, TBA, and/or
16 gasoline containing MTBE and/or TBA, as well as to the public and government agencies, that
17 such products were environmentally sound and appropriate for distribution, sale, and use. Indeed,
18 Defendants represented that gasoline containing MTBE could be handled the same as ordinary
19 gasoline, and required no special measures to protect against or respond to suspected releases to
20 the subsurface.

21 27. The Defendants further exacerbated the situation by, among other things, negligently,
22 carelessly, recklessly, and/or intentionally failing to: (1) prevent leaks of MTBE and/or TBA
23 through the use of appropriate technology; (2) install and maintain gasoline delivery systems that
24 prevent leaks and facilitate prompt detection and containment of any leaks; (3) monitor and
25 discover leaks as soon as possible; (4) warn those who may be injured as a result of the leak(s);
26 and (5) clean up and abate MTBE and/or TBA spill(s) as thoroughly and as soon as reasonably
27 possible and in a manner necessary to prevent harm and injury.

28 28. Plaintiff is informed the Defendants exercised control over use of gasoline containing

1 MTBE and/or TBA through a variety of means, including written agreements, inspection rights,
2 prescribing certain procedures and operating practices, training, sale of branded goods, and
3 agreements obligating the users of MTBE and/or TBA to acquire, store, and sell gasoline
4 containing MTBE and/or TBA. Therefore, the Defendants had actual control over leaking
5 gasoline delivery systems and/or were vicariously liable for the acts, omissions, and conduct of
6 the owners and operators of Merced gasoline stations and pipelines which released MTBE into the
7 environment.

8 29. The Defendants further advised consultants who conduct environmental investigations
9 and cleanups that gasoline with MTBE could be remediated using the same practices and
10 procedures used for conventional gasoline.

11 30. Gasoline containing MTBE and/or TBA was released from gasoline delivery systems
12 in Merced until at least 1997 from gasoline retail stations and, Plaintiff is informed, a pipeline
13 operated by Defendants Kinder Morgan and SFPP. Over time, MTBE and TBA migrated down to
14 groundwater and, after several years elapsed, traveled to the project area causing pollution,
15 contamination, and interference with the Merced RDA's project area. This appreciable injury and
16 damage occurred for the first time in July 2006, when the Regional Water Quality Control Board
17 determined that the parties responsible for releases at 1415 "R" Street and 1455 "R" Street in
18 Merced were not taking appropriate and timely action to abate the plume, and the Merced RDA
19 was asked to manage the project.

20 31. The City of Merced Redevelopment Agency seeks compensatory damages needed to
21 investigate, remediate, and remove gasoline, hydrocarbons, MTBE and/or TBA contamination,
22 and for past, present, and future remediation, and/or investigation costs incurred in or after August
23 2006.

24 FIRST CAUSE OF ACTION

25 (Cost Recovery under the Polanco Redevelopment Act)

26 32. Merced RDA refers to paragraphs 1 through 31 above, and by this reference
27 incorporates them into this cause of action as though fully set forth herein.

28 33. Prior to the commencement of this action Plaintiff served all legally required notices

1 under the Polanco Redevelopment Act (Health & Saf. Code, §§ 33459-33459.8) ("Polanco Act")
 2 on each of the Defendants. None of the Defendants submitted a proposed remedial action plan or
 3 took any other action as required by the Polanco Act; instead, some Defendants denied that they
 4 had any responsibility to remediate the project area. At all times relevant herein, Defendants, and
 5 each of them, have failed and refused to remediate the gasoline and MTBE contamination
 6 described herein.

7 34. As a direct result of the Defendants' acts alleged in this Complaint, the project area,
 8 including soil, groundwater, and improvements, has been contaminated, and will continue to be
 9 contaminated with gasoline, hydrocarbons, MTBE, and TBA which create a public health hazard
 10 unless abated. As a direct and proximate result thereof, plaintiff must initiate a remedial program
 11 to assess, evaluate, investigate, monitor, remove, clean up, correct, and abate such contamination
 12 in the project area and to restore the project area at significant expense, loss, and damage. Costs
 13 incurred within the past three years of the filing of the Complaint, or that are to be incurred in the
 14 future, include: loss of use of property, loss of tax revenues, property damage, restoration costs
 15 incurred within the past three years of the filing of the Complaint or that are to be incurred in the
 16 future, delay damages, property devaluation, interim and permanent remedial measures to control
 17 releases and potential releases of gasoline, hydrocarbons, MTBE, and TBA, cleanup costs,
 18 potential installation and maintenance of interceptor wells, and water treatment facilities, all in an
 19 amount to be proved at trial.

20 **SECOND CAUSE OF ACTION**

21 **(Products Liability)**

22 35. Merced RDA refers to paragraphs 1 through 34 above, and by this reference
 23 incorporates them into this cause of action as though fully set forth herein.

24 36. Defendants formulated, manufactured, compounded, refined, provided product
 25 information and/or instructions for use, promoted, marketed, distributed, transported, exchanged,
 26 and/or sold gasoline containing MTBE.

27 37. Defendants, and each of them, represented, asserted, claimed, and warranted that
 28 gasoline containing MTBE could be used in the same manner as gasoline not containing these

1 compounds, and/or that gasoline containing MTBE did not require any different or special
2 handling or precautions.

3 38. Defendants, and each of them, knew that said product(s) were to be purchased and
4 used without inspection for defects.

5 39. MTBE, and gasoline containing MTBE, are defective products because, among other
6 things:

- 7 (a) The design of these products was defective;
- 8 (b) The benefits of using MTBE in gasoline, if any, are greatly outweighed by the
9 associated costs and negative impacts imposed on society, consumers, and the
10 environment, and on groundwater used for public water supplies within the Merced
11 RDA;
- 12 (c) They cause extensive groundwater contamination by MTBE even when used in
13 their foreseeable and intended manner;
- 14 (d) Even at extremely low levels, MTBE renders drinking water putrid, foul, and unfit
15 for purveying as drinking water to the public, and TBA also renders drinking water
16 unfit for purveying as drinking water to the public;
- 17 (e) MTBE and TBA pose significant threats to the public health and welfare;
- 18 (f) The Defendants failed to provide adequate warnings of the known and foreseeable
19 risks of MTBE and/or gasoline containing MTBE, including, but not limited to,
20 groundwater contamination with MTBE;
- 21 (g) The Defendants failed to conduct reasonable, appropriate, or adequate scientific
22 studies to evaluate the environmental fate and transport and potential human health
23 effects of MTBE; and
- 24 (h) Commercial grade MTBE is defectively manufactured when it contains
25 unnecessary but environmentally harmful impurities such as TBA.

26 40. MTBE and/or gasoline containing MTBE were used in a manner in which they were
27 foreseeably intended to be used, and as a proximate result of the defects previously described,
28 MTBE directly and proximately caused the Merced RDA to sustain the injuries and damages set

1 forth in this Complaint within the past three years.

2 41. As a direct and proximate result of the acts and omissions of the Defendants alleged
3 herein, the Merced RDA has initiated a remedial program to assess, evaluate, investigate, monitor,
4 abate, clean-up, correct, contain, and remove MTBE contamination in the source area and project
5 area, all at significant expense, loss, and damage.

6 42. As a further direct and proximate result of the acts and omissions of the Defendants
7 alleged in this Complaint, the Merced RDA has and will sustain substantially increased expenses,
8 all to the plaintiff's damage, in an amount within the jurisdiction of this court. The Merced RDA
9 has and will also incur costs and attorneys' fees in prosecuting this action. The Merced RDA is
10 entitled to recover all such damages, together with court costs and reasonable attorneys' fees, in
11 this action.

12 43. Defendants Chevron, Shell, Exxon Mobil, Exxon, Conoco, Tosco, Equilon, and
13 DOES 1 through 50 knew that it was substantially certain that their alleged acts and omissions
14 described above would threaten public health and cause extensive contamination of common
15 water supplies, public drinking water supplies, and property damage. These defendants
16 committed each of the above described acts and omissions knowingly, willfully, and with
17 oppression, fraud, and/or malice, and with conscious disregard of the health and safety of others,
18 and of plaintiff's rights.

19 44. This conduct is reprehensible, despicable, and was performed to promote sales of
20 MTBE and/or gasoline containing MTBE in conscious disregard of the known risks of injury to
21 health and property. Defendants acted with willful and conscious disregard of the probable
22 dangerous consequences of that conduct and its foreseeable impact upon the Merced RDA.
23 Therefore, the Merced RDA requests an award of exemplary damages in an amount sufficient to
24 punish defendants Chevron, Shell, Exxon Mobil, Exxon, Conoco, Tosco, Equilon, and DOES 1
25 through 50. After the completion of additional investigation and discovery, Merced RDA may
26 seek leave of court to amend this Complaint to allege a claim for exemplary damages against
27 additional defendants if warranted by the facts.

THIRD CAUSE OF ACTION

(Negligence Against All Defendants)

45. Merced RDA refers to paragraphs 1 through 44 above, and by this reference incorporates them into this cause of action as though fully set forth herein.

46. Defendants had a duty to use due care in the sale, labeling, warnings, use, and instructions for use of MTBE and TBA, and gasoline containing MTBE and/or TBA, and gasoline delivery systems. Defendants Kinder Morgan, SFPP, and Does 48 through 60, inclusive, had a duty to properly operate, maintain, and inspect their pipeline and prevent and clean up releases of gasoline containing MTBE and/or TBA.

47. Defendants so negligently, carelessly, and/or recklessly sold, handled, labeled, instructed, controlled (or the lack thereof), tested (or the lack thereof), released, spilled, failed to warn, and/or sold gasoline containing MTBE and/or TBA, and/or so negligently, carelessly and recklessly handled, instructed, entrusted, controlled (or the lack thereof), tested (or the lack thereof), released, spilled, failed to warn, dispensed, and/or sold gasoline containing MTBE and/or TBA, and/or so negligently, carelessly, and recklessly dispensed MTBE and/or TBA and/or gasoline containing MTBE and/or TBA into gasoline delivery systems, and/or so negligently, carelessly, and/or recklessly constructed, installed, failed to warn, operated, and/or maintained gasoline delivery systems for use with gasoline containing MTBE and/or TBA, that they breached their duties to plaintiff and directly and proximately caused MTBE and/or TBA to contaminate, pollute, and threaten Merced RDA's project area, resulting in the harm which warrants the award of compensatory and punitive damages as prayed for in this Complaint.

48. Defendants, and each of them, among other things, negligently, carelessly, and/or recklessly failed to: (1) use appropriate technology to prevent leaks of gasoline containing MTBE and/or TBA; (2) install and maintain gasoline delivery systems that prevented leaks and facilitated prompt detection and containment of any leaks; (3) monitor and discover leaks as soon as possible; (4) warn those who may be injured as a result of the leaks; (5) warn those who handled MTBE of its properties; and/or (6) clean up and abate spills of gasoline containing MTBE and/or TBA as thoroughly and as soon as reasonably possible and in a manner necessary to

1 prevent harm and injury.

2 49. Defendants had actual control over the owners and operators of Merced gasoline
3 stations through a variety of means, including, but not limited to, written agreements, inspection
4 rights, prescribing certain procedures and operating practices, training, sale of branded goods, and
5 agreements obligating the respective owners and/or operators to acquire, store, and sell gasoline
6 containing MTBE and/or TBA. Therefore, Defendants had actual control over the owners and
7 operators with leaking gasoline delivery systems and/or were vicariously liable for the acts and
8 conduct of the owners and/or operators.

9 50. Defendants also undertook tank system testing, tank integrity testing, inventory
10 reconciliation, and testing, thereby affirmatively undertaking the duty to prevent releases of
11 gasoline containing MTBE and/or TBA from gasoline delivery systems, but they negligently
12 failed to properly discharge these duties.

13 51. Defendants further undertook to retain consultants to conduct environmental
14 investigations and cleanups, thereby affirmatively undertaking the duty to detect and remediate
15 releases of gasoline containing MTBE and/or TBA from gasoline delivery systems, but they
16 negligently failed to properly discharge these duties.

17 52. Defendants knew, or should have known, that the owners and operators of Merced
18 gasoline stations had leaking gasoline delivery systems with few, if any, containment systems
19 which should have been, but were not, upgraded or repaired. Defendants nonetheless negligently
20 supplied, sold, and/or entrusted gasoline containing MTBE and/or TBA to these owners and
21 operators knowing that MTBE and/or TBA would leak into the soil and contaminate groundwater.

22 53. By their conduct, Defendants, and each of them, among other things, are:

- 23 (a) committing, authorizing, aiding, and/or abetting the tampering with property
24 owned and/or used by Merced RDA as a public agency to provide water to its
25 water customers within the meaning of Civil Code section 1882 et seq.;
- 26 (b) interfering with Merced RDA's vested water rights; and
- 27 (c) impairing Merced RDA's right to appropriate water whose quality is not
28 diminished.

54. As a direct and proximate result of Defendants' acts and omissions as alleged herein, Merced RDA has incurred, is incurring, and will continue to incur MTBE and/or TBA investigation, remediation, and abatement costs and expenses required to restore the project area, and other damages, in an amount to be proved at trial.

55. For the reasons alleged herein, Merced RDA is entitled to an award of exemplary damages against defendants Chevron, Shell, Exxon Mobil, Exxon, Conoco, Tosco, Equilon, and DOES 1 through 50. After the completion of additional investigation and discovery, Merced RDA may seek leave of court to amend this complaint to allege a claim for exemplary damages against additional defendants if warranted by the facts.

FOURTH CAUSE OF ACTION

(Trespass Against All Defendants)

56. Merced RDA refers to paragraphs 1 through 55 above, and by this reference incorporates them into this cause of action as though fully set forth herein.

57. Merced RDA is the owner and/or actual possessor of property rights and interests. Defendants, their agents and employees, knew, or in the exercise of reasonable care should have known, that MTBE and TBA and gasoline containing MTBE and/or TBA are extremely hazardous to groundwater and to public water systems, including the property and other rights of the Merced RDA.

58. The Defendants so negligently, recklessly, and/or intentionally released, spilled, and/or failed to properly control, handle, store, contain, and use gasoline containing MTBE and/or TBA, and/or failed to clean up spills and leaks of gasoline containing MTBE and/or TBA, that they directly and proximately caused MTBE and/or TBA to contaminate Merced RDA's project area as follows:

(a) The Defendants participated in the use, storage, and release of gasoline containing MTBE and/or TBA by owning, controlling, regulating, constructing, installing, operating, monitoring, inspecting, and testing, or by failing to do so, the gasoline delivery systems and thereby proximately caused gasoline containing MTBE and/or TBA to be released into the environment and groundwater.

- 1 (b) The Defendants negligently provided instructions and/or warnings to their
2 customers and others concerning MTBE and/or TBA, knowing that there was a
3 substantial danger that if their instructions and/or warnings were followed that
4 gasoline containing MTBE and/or TBA dispensed into gasoline delivery systems
5 would escape into the environment and contaminate groundwater and would not be
6 appropriately remediated.
- 7 (c) The Defendants negligently delivered (directly or indirectly) gasoline containing
8 MTBE and/or TBA into gasoline delivery systems which they knew, or should
9 have known, were inadequate, old, leaking, and/or defective, and thereby created a
10 substantial known danger that MTBE and TBA would be released into the
11 environment and contaminate groundwater; and negligently provided instructions
12 and/or warnings to their customers and others concerning MTBE and TBA,
13 knowing that there was a substantial danger that if their instructions and/or
14 warnings were followed that gasoline containing MTBE and/or TBA dispensed
15 into gasoline delivery systems would escape into the environment and contaminate
16 groundwater.
- 17 (d) Defendants retained consultants and negligently controlled and/or directed their
18 cleanup and remediation activities (or the lack thereof) at gasoline station sites,
19 thereby causing and permitting MTBE and/or TBA to contaminate and threaten
20 Merced RDA's project area, and Defendants failed to warn the appropriate entities
21 and individuals, including Merced RDA, of known risks, spills, releases, and/or
22 leaks, and/or failed to undertake reasonable, appropriate, or necessary action to
23 reduce, remediate, or abate MTBE and/or TBA groundwater contamination.
- 24 (e) Defendants and their agents negligently overfilled gasoline delivery systems with
25 gasoline containing MTBE and/or TBA, and/or spilled or released it at gasoline
26 facilities near Merced RDA's project area.
- 27 (f) When Defendants learned, or reasonably should have learned, that MTBE and/or
28 TBA were persistent, significant, and/or widespread sources of groundwater

contamination, or threatened to be so, Defendants failed to warn the appropriate entities and individuals, including Merced RDA, of known risks, spills, releases, and/or leaks, and/or failed to undertake reasonable, appropriate, or necessary action to reduce, remediate, or abate MTBE and/or TBA groundwater contamination.

59. Defendants had actual control over Merced gasoline stations through a variety of means, including, but not limited to, written agreements, inspection rights, prescribing certain procedures and operating practices, sale of branded goods, agreements obligating the respective owners and/or operators to acquire, store, and sell gasoline containing MTBE and/or TBA, and training. Therefore, Defendants had actual control over the Merced gasoline stations with leaking gasoline delivery systems and/or were vicariously liable for the acts and conduct of the owners and operators of those stations.

60. The MTBE and TBA contamination of Merced RDA's project area has varied and will vary over time and requires investigation, remediation, abatement, and/or treatment. The Merced RDA has engaged, or will engage, in remediation, abatement, investigation, and/or treatment programs, and thereby has sustained, is sustaining, and will sustain, the damages alleged herein.

61. For the reasons alleged herein, Merced RDA is entitled to an award of exemplary damages against defendants Chevron, Shell, Exxon Mobil, Exxon, Conoco, Tosco, Equilon, and DOES 1 through 50. After the completion of additional investigation and discovery, Merced RDA may seek leave of court to amend this complaint to allege a claim for exemplary damages against additional defendants if warranted by the facts.

FIFTH CAUSE OF ACTION

(Nuisance Against All Defendants)

62. Merced RDA refers to paragraphs 1 through 61 above, and by this reference incorporates them into this cause of action as though fully set forth herein.

63. The negligent, reckless, intentional, and ultrahazardous activity of Defendants, and each of them, as alleged herein, has resulted in the contamination and pollution of and threats to Merced RDA's project area and thereby constitutes a nuisance. The contamination, pollution, and

1 threats to Merced RDA's project area from gasoline containing MTBE and/or TBA is a public
 2 nuisance as defined in Civil Code section 3479, Civil Code section 3480, Health and Safety Code
 3 section 5410, and Water Code section 13050, as it is injurious to health, indecent, and offensive to
 4 the senses and has substantially interfered with and obstructed Merced RDA's project area and
 5 property rights.

6 64. The Defendants' negligent failure to warn that:

- 7 (a) MTBE and TBA are more soluble, mobile, and persistent than other
 8 components of conventional gasoline and, therefore, have a unique and
 9 greater potential to contaminate groundwater and drinking water supplies;
- 10 (b) special precautions should be taken to prevent, contain, limit, detect, and
 11 cleanup releases of gasoline containing MTBE and TBA;
- 12 (c) gasoline delivery systems should be upgraded and improved to prevent
 13 releases of gasoline containing MTBE;
- 14 (d) any release of MTBE and TBA must be detected and remediated as soon as
 15 possible to avoid contamination of wells and drinking water;
- 16 (e) handling gasoline containing MTBE and TBA in the same manner as
 17 conventional gasoline can cause environmental contamination which is
 18 difficult and expensive to cleanup; and
- 19 (f) even small spills of gasoline containing MTBE (including a cup spilled on
 20 the pavement by the customer) can cause environmental contamination if it
 21 is not promptly cleaned up;

22 was a substantial factor in the creation of the nuisance.

23 65. Merced RDA owns and holds property rights and interests damaged by the nuisance.
 24 Merced RDA's injury is separate and distinct from that of the public.

25 66. Merced RDA has not consented to and does not consent to this nuisance. Defendants,
 26 and each of them, knew, or should have known, that Merced RDA would not consent to this
 27 nuisance.

28 67. As a direct and proximate result of the nuisance, Merced RDA has been damaged and

1 is entitled to the compensatory and exemplary damages alleged herein, or to such other
2 appropriate relief as Merced RDA may elect at trial, including, but not limited to, equitable relief
3 in the form of an order requiring the Defendants to abate the nuisance injuring Merced RDA and
4 the project area.

5 **PRAYER**

6 **WHEREFORE**, the City of Merced Redevelopment Agency requests judgment against
7 Defendants, and each of them, for:

- 8 1. Compensatory damages according to proof;
- 9 2. Exemplary damages in an amount sufficient to punish defendants Chevron, Shell,
10 Exxon Mobil, Exxon, Conoco, Tosco, Equilon, and DOES 1 through 50, inclusive, and to deter
11 those defendants from ever committing the same or similar acts;
- 12 3. An Order declaring that the Defendants have created a nuisance, and compelling
13 Defendants to abate that nuisance;
- 14 4. Pursuant to Civil Code section 1882.2, three times the amount of actual damages, plus
15 the cost of the suit and reasonable attorneys' fees;
- 16 5. Reasonable attorneys' fees, pursuant to Code of Civil Procedure section 1021.5 or
17 otherwise, and costs incurred in prosecuting this action, and prejudgment interest to the full extent
18 permitted by law; and
- 19 6. Such and other further relief as the court may deem just and proper.

20 Dated: April 3, 2008

MILLER, AXLINE & SAWYER
A Professional Corporation


21
22 By: 
23 DUANE C. MILLER
24 Attorneys for Plaintiff
25
26
27
28

Exhibit 2

FILED
MERCED COUNTY

08 APR 25 AM 9:58

CLERK OF THE SUPERIOR COURT

BY *Contestino* DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MERCED

CITY OF MERCED REDEVELOPMENT
AGENCY,

Plaintiff,

vs.

EXXON MOBIL CORPORATION; EXXON
CORPORATION; CHEVERON U.S.A. INC.;
CONOCOPHILLIPS COMPANY, F/K/A
PHILLIPS PETROLEUM COMPANY,
INDIVIDUALLY AND AS SUCCESSOR-
IN-INTEREST BY MERGER TO TOSCO
CORPORATION; SHELL OIL COMPANY,
KINDER MORGAN ENERGY PARTNERS,
L.P.; EQUILON ENTERPRISES LLC; SFPP,
L.P.; TESORO CORPORATION; TESORO
REFINING AND MARKETING COMPANY;
and DOES 1 THROUGH 200, inclusive,

Defendant.

CITY OF MERCED,

Plaintiff,

vs.

CHEVRON U.S.A., INC., SHELL OIL
COMPANY; EXXONMOBIL
CORPORATION; KINDER MORGAN
ENERGY PARTNERS L.P.; EQUILON
ENTERPRISES LLC; SFPP, L.P. and DOES
1 THROUGH 200, inclusive,

Defendant.

Case Nos.: 148451/151145

**NOTICE OF CASE MANAGEMENT
CONFERENCE**

NOTICE OF CASE MANAGEMENT CONFERENCE

City of Merced Redevelopment Agency v. Exxon Mobil Corporation, et al. – Case No. 151145

1 Notice is hereby given that a case management conference in the above-entitled
2 matters will be held on July 24, 2008, at 9:00 a.m. in Courtroom 4 of the above Court.
3 Plaintiff shall complete service of process on all defendants by June 20, 2008 and shall
4 serve all defendants with a copy of this Case Management Conference Notice.

5 The parties may appear by Court Call or by personal appearance. The parties are
6 to file a case management statement no later than 10 days prior to the conference
7 addressing all of the following issues:

- 8 1. Appropriateness of consolidation of Case No. 148451 and 151145 for any
9 or all of the following purposes and issues:
 - 10 a. Discovery Regarding liability;
 - 11 b. Discovery regarding damages;
 - 12 c. Trial regarding liability;
 - 13 d. Trial regarding damages;
- 14 2. Pleadings and Parties;
 - 15 a. Deadlines and limits on joinder of parties and for filing amended or
16 additional pleadings;
- 17 3. Feasibility of resolution by mediation and, if so, nomination and
18 appointment of mediator.
- 19 4. Discovery;
 - 20 a. Proposals for preliminary informal discovery orders;
 - 21 b. If any party intends to assert privilege or the need for protective orders
22 regarding any documents, studies, or other anticipated discovery,
23 proposals for protective orders.
 - 24 c. Appointment of Special Master to resolve discovery disputes.
 - 25 d. Proposals regarding early disclosure of experts and completion of
expert discovery.

NOTICE OF CASE MANAGEMENT CONFERENCE

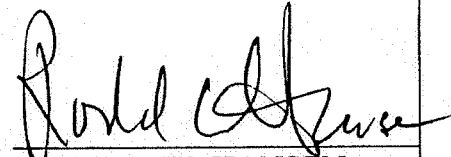
City of Merced Redevelopment Agency v. Exxon Mobil Corporation, et al. – Case No. 151145

1 5. Anticipated law and motion, i.e. any dispositive motions.

2
3 6. Dates for further Case Management.

4 7. Trial dates and estimated length of trial.

5 DATED: April 24, 2008



RONALD W. HANSEN
Judge of the Superior Court

NOTICE OF CASE MANAGEMENT CONFERENCE

City of Merced Redevelopment Agency v. Exxon Mobil Corporation, et al. – Case No. 151145

CLERK'S PROOF OF SERVICE BY MAIL

(CCP 1012, 1013a (4), 2015.5)

STATE OF CALIFORNIA)

Case#: 148451

COUNTY OF MERCED)

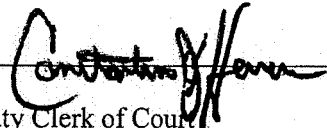
I am a citizen of the United States of the County aforesaid and a deputy clerk with the California Superior Court of California of Merced County. I am over the age of eighteen years and not a party to the above-entitled action. My business address is Superior Court of California County of Merced, Clerk's Office, 2260 N Street, Merced, CA 95340.

On April 25, 2008, I served the within **NOTICE OF CASE MANAGEMENT CONFERENCE** on the following parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid with the United States Postal Service at Merced, California addressed as follows:

Duane C. Miller MILLER, AXLINE & SAWYER 1050 Fulton Ave., Suite 100 Sacramento, CA 95825-4272	Gregory G. Diaz, City Attorney CITY OF MERCED 678 West 18 th Street Merced, CA 95340
William D. Temko, Esq. MUNGER, TOLLES & OLSEN LLP 355 South Grand Avenue, 35 th Floor Los Angeles, CA 90071-1560	Patrick J. Cafferty, Jr., Esq. MUNGER, TOLLES & OLSEN LLP 560 Mission Street, 27 th Floor San Francisco, CA 94105-2907
Peter A. Strotz, Esq. FILICE, BROWN, EASSA & MECLEOD LLP 1999 Harrison Street, Suite 1800 Oakland, CA 94612-0850	Charles C. Correll, Jr., Esq. KING & SPALDING LLP 1100 Louisiana Street, Suite 4000 Houston, TX 77002
Jeffery J. Parker, Esq. SHEPPARD, MULLIN, RICHTER & HAMPTON LLP 333 South Hope Street, 48 th Floor Los Angeles, CA 90071-1448	John Lynn Smith, Esq. REED SMITH LLP 1999 Harrison, Street, Suite 2400 Oakland, CA 94612-3572
Jon D. Anderson, Esq. LATHAM & WATKINS LLP 650 Town Center Drive, 20 th Floor Costa Mesa, CA 92626-1925	

NOTICE OF CASE MANAGEMENT CONFERENCECity of Merced v. Chevron U.S.A., et al. – Case No. 148451

1 I declare under penalty of perjury that the foregoing is true and correct. Executed on April 25, 2008, at
2 Merced, California.

3
4 
5 Deputy Clerk of Court

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Duane C. Miller, SBN 57812 Miller Axline & Sawyer 1050 Fulton Ave, Ste. 100 Sacramento, CA 95825 TELEPHONE NO: 916-488-6688 FAX NO: 916-488-4288 ATTORNEY FOR (Name): Plaintiff, City of Merced Redevelopment Agency		FOR COURT USE ONLY FILED MERCED COUNTY 2008 APR 14 PM 4:44 CLERK OF THE SUPERIOR COURT BY PATRICIA J. PIETRO DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Merced STREET ADDRESS: 2260 N. Street MAILING ADDRESS: 2260 N. Street CITY AND ZIP CODE: Merced, CA 95340 BRANCH NAME:		
CASE NAME: City of Merced Redevelopment Agency v. Exxon Mobil Corp., et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: 151145 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input checked="" type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	--	--

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 5
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 3, 2008
 Duane C. Miller

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

William.Temko@mto.com

WESLEY T. SHIH (State Bar No. 233531)

Wesley.Shih@mtu.com

MUNGER, TOLLES & OLSON LLP

355 South Grand Ave., 35th Floor

Los Angeles, California 90071-1560

Telephone: (213) 683-9100

Facsimile: (213) 687-3702

PATRICK J. CAFFERTY, JR (State Bar No. 103417)

Patrick.Cafferty@mto.com

HOJOON HWANG (State Bar No. 184950)

Hojoon.Hwang@mt0.com

MÜNGER, TÖLLES & OLSON LLP

560 Mission Street, 27th Floor

San Francisco, CA 94105-2907

Telephone: (415) 512-4000

Facsimile: (415) 512-4077

Attorneys for Defendants

SHELL OIL COMPANY AND EQUILON

ENTERPRISES LLC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CITY OF MERCED
REDEVELOPMENT AGENCY,

Plaintiff,

V.

EXXON MOBIL CORPORATION;
EXXON CORPORATION;
CHEVRON U.S.A. INC.;
CONOCOPHILLIPS COMPANY,
F/K/A PHILLIPS PETROLEUM
COMPANY, INDIVIDUALLY AND
AS SUCCESSOR-IN-INTEREST BY
MERGER TO TOSCO
CORPORATION; SHELL OIL
COMPANY; KINDER MORGAN
ENERGY PARTNERS, L.P.;
EQUILON ENTERPRISES LLC;
SFPP, L.P.; TESORO
CORPORATION; TESORO

Case No. 151145

NOTICE OF REMOVAL

REFINING AND MARKETING
COMPANY and DOES 1 THROUGH
200, inclusive,

Defendants.

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF THIS COURT:

The undersigned defendants (“Defendants”), by their attorneys and pursuant to the Energy Policy Act of 2005, Pub. L. 109-58, Title XV, § 1503, Aug. 8, 2005, 119 Stat. 1076, 42 U.S.C. § 7545 (nt), and 28 U.S.C. § 1446, file their Notice of Removal of this action captioned as *City of Merced Redevelopment Agency v. Exxon Mobil Corporation , et al.*, Case No. 151145, from the Superior Court of the State of California in and for the County of Merced, to the United States District Court for the Eastern District of California. The basis for removal is as follows:

1. On April 7, 2008, Plaintiff City of Merced Redevelopment Agency (“Merced RDA” or “Plaintiff”) filed this action in the Merced Superior Court. A copy of the Complaint is attached hereto as Exhibit 1. A copy of all other “process, pleadings, and orders” in the underlying action are attached hereto as Exhibit 2. *See* 28 U.S.C. § 1446(a).

2. Defendants remove this action on the basis of the Energy Policy Act of 2005, which includes an express provision allowing for the removal of claims and

1 legal actions related to allegations involving actual or threatened contamination of
 2 methyl tertiary butyl ether ("MTBE") to the appropriate United States District Court.
 3 This law was enacted on August 8, 2005. *See* 42 U.S.C. §§ 7545, *et seq.*, Pub.L. 109-
 4 58, Title XV, § 1503. Removal is appropriate here pursuant to the Energy Policy Act
 5 because, as described in greater detail below, Plaintiff's claims relate to alleged
 6 MTBE contamination.

7 3. This Notice of Removal is filed in the District Court of the United States
 8 for the district in which this suit was filed.

9 4. No Defendant was served prior to April 22, 2008. Accordingly, this
 10 Notice of Removal is filed within the time frame provided by 28 U.S.C. § 1446(b).

11 5. All Defendants have joined in this Notice or otherwise consented to this
 12 removal. For obvious reasons, the law is clear that fictitious or non-existent parties,
 13 including Doe defendants, are not required to join in or consent to the removal.¹

14 6. Pursuant to the requirements of 28 U.S.C. § 1446(d), Defendants will
 15 promptly file a copy of this Notice of Removal with the Clerk of the Superior Court
 16 in and for the County of Merced, where the action was originally filed. Defendants
 17 have also served Plaintiff with this Notice of Removal.

18 ALLEGATIONS OF PLAINTIFF'S COMPLAINT

19 7. The plaintiff, City of Merced Redevelopment Agency ("Merced RDA"
 20 or "Plaintiff") is a California state agency charged with the power to alter, improve,
 21 reconstruct, rehabilitate, modernize, and clean property located in the Merced
 22 Redevelopment Project Area ("project area"). (Exhibit 1, ¶1) Plaintiff alleges that
 23 the named defendants, corporate members of the gasoline industry, are responsible
 24 for the costs and damages relating to the presence and abatement of gasoline and
 25

26 ¹ *United Computer Sys., Inc. v. AMT Corp.*, 298 F.3d 756, 762 (9th Cir. 2002)
 27 ("nominal" defendants need not consent to removal); *Steel Valley Auth. V. Union*
 28 *Switch & Signal Div.*, 809 F.2d 1006, 1009 n.2 (3d Cir. 1987) ("nominal" parties are
 disregarded in determining whether all defendants consent to removal).

1 MTBE located in or about the project area. (*Id.*, ¶¶3-15). Plaintiff's causes of action
2 are based on state statutory and common law. (*Id.*, ¶¶32-67).

3 8. Plaintiff further alleges that Defendants, *inter alia*, supplied gasoline
4 containing MTBE to stations in Merced from 1992 to at least 2002, such that releases
5 of gasoline to the subsurface contaminated and polluted the project area. (Exhibit 1,
6 ¶15). Plaintiff also brings allegations that Defendants, *inter alia*, sold and distributed
7 MTBE; owned and operated gasoline delivery systems in areas affecting the project
8 area; and failed to take the appropriate remedial action to abate MTBE that escaped
9 from gasoline delivery systems. (*Id.*).

10 9. The Complaint also contains specific allegations that Defendants
11 concealed or failed to disclose their knowledge that MTBE would contaminate soil
12 and groundwater in particular. (Exhibit 1, ¶¶24-25). Additionally, Plaintiff contends
13 that Defendants chose not to take precautions in light of their knowledge of the
14 possibility of discharges of MTBE into the soil and groundwater. (*Id.*, ¶¶26-27).

15 10. Plaintiff brings one statutorily based cause of action—cost recovery
16 under the Polanco Redevelopment Act (California Health & Safety Code §§ 33459-
17 33459.8). (Exhibit 1, ¶¶32-34). Plaintiff also brings state common law causes of
18 action for products liability, negligence, trespass, and nuisance. (*Id.*, ¶¶35-67). All
19 causes of action are based on the harm allegedly caused by the presence of MTBE in
20 the soil and groundwater within the project area. (*Id.*, ¶¶35-67).

21 JURISDICTION AND BASIS FOR REMOVAL

22 11. Defendants remove this case on the basis of the Energy Policy Act of
23 2005, which specifies that “Claims and legal actions filed after the date of enactment
24 of this Act [Aug. 8, 2005] related to allegations involving actual or threatened
25 contamination of methyl tertiary butyl ether (MTBE) may be removed to the
26 appropriate United States district court.” Pub.L. 109-58, Title XV, § 1503, Aug. 8,
27 2005, 119 Stat. 1076. As this action was filed on April 7, 2008 and includes
28

1 allegations regarding MTBE contamination, this action is properly removed under the
2 Energy Policy Act.

3 12. In addition to the jurisdiction over the claims against Defendants, as set
4 forth above, this Court has supplemental jurisdiction over the remainder of the state
5 court claims pursuant to 28 U.S.C. § 1367.

6 WHEREFORE, Defendants hereby remove to this Court the action captioned
7 *City of Merced Redevelopment Agency v. Exxon Mobil Corporation, et al.*, Case No.
8 151145 from the Superior Court of the State of California in and for the County of
9 Merced.

10
11 Dated: May 20, 2008

MUNGER, TOLLES & OLSON LLP

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14 By: PATRICK J. CAFFERTY, JR.
15 Attorneys for Defendants Shell
16 Oil Company and Equilon
17 Enterprises LLC
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**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Exxon Mobil Corporation; Exxon Corporation; Chevron U.S.A, Inc.;
"Additional Parties Attachment form attached"

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
City of Merced Redevelopment Agency

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
MERCED COUNTY
JUN 25 2008 7 PM 1:31
CLERK OF THE SUPERIOR COURT
CN. JUAREZ
BY: [Signature] DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Merced County Superior Court
627 W. 21st Street
Merced, CA 95340

CASE NUMBER:
(Número del Caso):

151145

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Duane C. Miller; Miller Axline & Sawyer
1050 Fulton Avenue, Suite. 100, Sacramento, CA 95825

(916) 488-6688
CN. JUAREZ

DATE:

(Fecha)

APR 07 2008

KATHLEEN GOETSCH

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): Shell oil company

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

4/25/08 @ 12:35p.m.

Page 1 of 1

SUM-200(A)

SHORT TITLE: City of Merced Redevelopment Agency v. Exxon Mobil Corp., et al.	CASE NUMBER:
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INSTRUCTIONS FOR USE

- ▶ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- ▶ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff ☒ Defendant ☐ Cross-Complainant ☐ Cross-Defendant

ConocoPhillips Company, F/K/A Phillips Petroleum Company, individually and as Successor-in-Interest by Merger to Tosco Corporation; Shell Oil Company; Kinder Morgan Energy Partners, L.P.; Equilon Enterprises LLC; SFPP, L.P.; Tesoro Corporation; Tesoro Refining and Marketing Company; and DOES 1 through 200, inclusive.

Page 2 of 2

Page 1 of 1

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

Exxon Mobil Corporation; Exxon Corporation; Chevron U.S.A, Inc.;
"Additional Parties Attachment form attached"

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
City of Merced Redevelopment Agency

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CLERK OF THE SUPERIOR COURT
C.N. JUAREZ
BY **C.N. JUAREZ** DEPUTY

JUL 7 7 PM 1:31

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

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The name and address of the court is:

(El nombre y dirección de la corte es):

Merced County Superior Court
627 W. 21st Street
Merced, CA 95340

CASE NUMBER:
(Número del Caso):

151145

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Duane C. Miller; Miller Axline & Sawyer
1050 Fulton Avenue, Suite 100, Sacramento, CA 95825

(916) 488-6688
C.N. JUAREZ

DATE:
(Fecha)

APR 07 2008

KATHLEEN GOETSCH

Clerk, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **Equilon Enterprises, LLC**
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☒ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

4/25/08 @ 12:35 pm

Page 1 of 1

SUM-200(A)

SHORT TITLE: City of Merced Redevelopment Agency v. Exxon Mobil Corp., et al.	CASE NUMBER
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff
 ☒ Defendant
 ☐ Cross-Complainant
 ☐ Cross-Defendant

ConocoPhillips Company, F/K/A Phillips Petroleum Company, individually and as Successor-in-Interest by Merger to Tosco Corporation; Shell Oil Company; Kinder Morgan Energy Partners, L.P.; Equilon Enterprises LLC; SFPP, L.P.; Tesoro Corporation; Tesoro Refining and Marketing Company; and DOES 1 through 200, inclusive.

Page 2 of 2

Page 1 of 1

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Duane C. Miller Miller Axline & Sawyer 1050 Fulton Ave, Ste. 100 Sacramento, CA 95825 TELEPHONE NO.: 916-488-6688 FAX NO. (Optional): 916-488-4288 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff, City of Merced Redevelopment Agency		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Merced STREET ADDRESS: 2260 N. Street MAILING ADDRESS: 627 W. 21st Street CITY AND ZIP CODE: Merced, CA 95340 BRANCH NAME:		
PLAINTIFF/PETITIONER: City of Merced Redevelopment Agency DEFENDANT/RESPONDENT: Exxon Mobil Corporation, et al.		CASE NUMBER: 151145
PROOF OF SERVICE OF SUMMONS		Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. ☐ summons
 - b. ☐ complaint
 - c. ☐ Alternative Dispute Resolution (ADR) package
 - d. ☐ Civil Case Cover Sheet (served in complex cases only)
 - e. ☐ cross-complaint
 - f. ☐ other (specify documents):
3. a. Party served (specify name of party as shown on documents served):

 b. ☐ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served:
5. I served the party (check proper box)
 - a. ☐ by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): (2) at (time):
 - b. ☐ by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached
 - (5) ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: City of Merced Redevelopment Agency	CASE NUMBER:
DEFENDANT/RESPONDENT: Exxon Mobil Corporation, et al.	151145

- 5 c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgment of Receipt*.) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ by other means (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☐ On behalf of (specify):
- under the following Code of Civil Procedure section:
- | | |
|---|---|
| <input type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. Person who served papers

- a. Name:
- b. Address:
- c. Telephone number:
- d. The fee for service was: \$
- e. I am:
- (1) ☐ not a registered California process server
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☐ a registered California process server:
- (i) ☐ owner ☐ employee ☐ independent contractor
- (ii) Registration No.:
- (iii) County:

8. ☐ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date:

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

(SIGNATURE)

NOTICE OF INCLUSION IN THE COURT
EARLY MEDIATION PROGRAM,
CASE MANAGEMENT CONFERENCE PROGRAM
AND TRIAL COURT DELAY REDUCTION ACT PROGRAM

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED
2260 "N" Street, Merced, CA 95340

FILED

APR -7 PM 1:37

City of Merced Redev.

File No.

151145

CLERK OF THE SUPERIOR COURT

BY

DEPUTY

vs.

Exxon Mobil Corp, et al.

- NOTICE OF INCLUSION IN THE COURT'S
1. EARLY MEDIATION PROGRAM ("EMP");
 2. CASE MANAGEMENT CONFERENCE ("CMC") PROGRAM; and
 3. TRIAL COURT DELAY REDUCTION PROGRAM

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD, PLEASE TAKE NOTICE THAT:

1. This action is included in the Court's **EARLY MEDIATION PROGRAM ("EMP")**. Parties may opt-out of the EMP, without cause, by written notice to the Court within the first 120 days the action is pending. **PARTIES ARE OTHERWISE TO PAY THE REQUIRED \$300 FEE AND MEDIATE THE CASE PRIOR TO THE FIRST SCHEDULED CMC.** Please see the ADR Guide for complete instructions.

2. A **CASE MANAGEMENT CONFERENCE ("CMC")** in the above action has been scheduled, per Local Rule 4(b)(1)(a), on:

SEPTEMBER 2, 2008 at 3:00 PM in Room: 1202

Pursuant to Cal. Rules of Court, Rule 3.724, the Parties must **MEET AND CONFER** no later than 30 days prior to the Case Management Conference. A **CASE MANAGEMENT CONFERENCE STATEMENT** shall be filed with the Court no later than 15 days prior to the Case Management Conference. Parties shall use **Judicial Council form CM-110**, available at the Civil Clerk's Office or at: www.courtinfo.ca.gov. A Temporary Judge will likely be assigned to hear the CMC. You have the right to object to having a Temporary Judge hear the CMC; if you intend to object, please do so at the earliest possible time before the hearing commences. Otherwise, Parties will be deemed to have consented to having a Temporary Judge hear the CMC.

Parties desiring to appear telephonically at the Case Management Conference ("CMC") shall comply with Cal. Rules of Court, Rule 3.670, Local Rule 4, and are responsible for making timely arrangements with CourtCall, LLC. CourtCall, LLC may be reached at: (888) 882-6878. Notices of Telephonic Appearance may be placed on the CMC Statement itself, or may be filed independently with the Court **NOT LESS THAN THREE (3) COURT DAYS** prior to the Case Management Conference. A Notice of Telephonic Appearance is deemed valid on any continued CMCs.

3. This action is included in the **TRIAL COURT DELAY REDUCTION ACT PROGRAM**. You are required to comply with Local Rule 4 and California Rules of Court, Rules 3.720-3.730. Merced Superior Court's Local Rules are available at: www.mercedcourt.org.

Plaintiff must serve this Notice along with the Summons, Complaint and ADR Packet on all parties to this action. Failure to do so may cause delay to this action.

DATED: APR 07 2008

KATHLEEN GOETSCH, COURT EXECUTIVE OFFICER

G.N. JUAREZ

By Deputy of the Superior Court

X:EMP/CMC/DelayNotice